

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

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ALAN C. FROST SR.,	:	
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Petitioner,	:	Civ. No. 16-2982 (FLW)
	:	
v.	:	
	:	
STEVEN JOHNSON et al.,	:	MEMORANDUM AND ORDER
	:	
Respondents.	:	
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Petitioner *pro se*, Alan C. Frost Sr. (“Petitioner”), who is presently detained at New Jersey State Prison, in Trenton, New Jersey, brought a Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus before this Court. (*See* ECF No. 1.) At the time of filing, Petitioner paid the required five-dollar filing fee. On February 28, 2019, the Court issued an Opinion and Order denying the Petition with prejudice. (ECF Nos. 9 & 10.)

On March 18, 2019, Petitioner filed a notice of appeal. (ECF No. 11.) He concurrently filed a motion for leave to proceed *in forma pauperis*. (ECF No. 12.) A party seeking to pursue appeal *in forma pauperis* must file a proper affidavit of poverty under Federal Rule of Appellate Procedure 24. *See* Fed. R. App. P. 24(a)(1). Pursuant to Local Appellate Rule 24.1(c), a prisoner seeking to appeal the denial of a habeas petition *in forma pauperis*¹ must include with the affidavit of poverty “a certified statement of the prison account statement(s) (or institutional equivalent) for the 6 month period preceding the filing of the notice of appeal.” L. App. R. 24.1(c).

¹ Paragraph (c) of Local Appellate Rule 24.1 applies to “cases filed in which 28 U.S.C. § 1915(b) does not apply.” L. App. R. 24.1(c). The Third Circuit has held that § 1915(b) does not apply to habeas petitions or to appeals of denials of habeas petitions. *Santana v. United States*, 98 F.3d 752, 756 (3d Cir. 1996).

Petitioner's motion to proceed *in forma pauperis* includes an affidavit of poverty, (ECF No. 12-6), which substantially complies with the requirements of the Federal Rules of Appellate Procedure. *See* Fed. R. App. P. 24(a)(1); Fed. R. App. P., App'x, Form 4. Petitioner indicates, however, that he has not submitted the required six-month account statement because "prison officials have not returned that document to Petitioner with a certification." (ECF No. 12-2.) In the interests of justice, the Court will grant Petitioner's motion to proceed *in forma pauperis*, but will require him to file a certified, six-month prison-account statement with the Court within 30 days.

Accordingly, IT IS, on this 25th day of March 2019,

ORDERED that this case is REOPENED solely for the purposes of resolving the present motion; and it is further

ORDERED that Petitioner's motion to proceed on appeal *in forma pauperis*, (ECF No. 12), is hereby GRANTED; and it is further

ORDERED that Petitioner shall file with the Court the certified, six-month prison-account statement required by Local Civil Rule 24.1(c) within 30 days of the entry of this Memorandum and Order; and it is further

ORDERED that the Clerk of the Court shall again mark this case as CLOSED: and it is further

ORDERED that the Clerk of the Court shall send a copy of this Memorandum and Order to plaintiff by regular U.S. mail.

/s/ Freda L. Wolfson
FREDA L. WOLFSON
United States District Judge